

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
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Sacramento, California 95814

CALIFORNIA CODE OF REGULATIONS, TITLE 10

CHAPTER 5, SUBCHAPTER 3

[NOTE: All Regulation text is new and is being added to Title 10, California Code of Regulations.]

ADOPT ARTICLE 9.8 TO READ:

Article 9.8 Statutory Deposit Requirements for Workers' Compensation Deductibles and Loss Reserves Policies.

Section 2509.80. Authority and Purpose.

~~This article is promulgated pursuant to authority granted to the Insurance Commissioner under section 11736.5 of the California Insurance Code. The purpose of this article is to establish those forms of collateral or security that an insurer may designate to secure the deductible amount of any policy of workers' compensation insurance and to establish the basis for reserves and the recognition of receivables for insurers writing workers' compensation deductible policies. Workers' compensation insurers are obligated to pay all claims in full as if they are first dollar claims, and the deductible establishes only a legal obligation of reimbursement by the insured employer to the workers' compensation insurer. This article specifies that loss and loss adjustment expense reserves and the required deposits for workers' compensation deductible policies shall be established gross of the deductibles and allows for credit against those required deposits for collateral, as specified in the article, obtained from insured employers by the workers' compensation insurer.~~

This article establishes rules of substance and procedure for determining the statutory deposit required for workers' compensation deductible policies. This article provides that the statutory deposit shall be made on a first-dollar basis, as if the policies were issued without deductibles; it specifies the procedure to calculate the premium and reserves reported in Special California Schedule P; and allows a reduction in the statutory deposit required for the deductible layer by an amount equal to specified collateral. This article does not apply to the State Compensation Insurance Fund.

Note: Authority cited: Sections 922.8, 923, 923.5, 11558, 11691, 11736.5, California Insurance Code; *CalFarm Insurance Company v. Deukmejian*, 48 Cal. 3d 805 (1989); and 20th Century Insurance Company v. Garamendi, 8 Cal. 4th 216 (1994). Reference cited: Sections 922.7(a), 922.5, 923, 923.5, 1104.9(a)(2), 1170 *et seq.*, 11558, 11691, 11693, 11735 and 11736.5, California Insurance Code.

Section 2509.81. Definitions.

For purposes of this article the following definitions shall apply:

~~(a) “Assets held in trust” means assets obtained as collateral or security in the form of cash; investments as authorized as general investments under Article 3 (commencing with Section 1170) of Chapter 2 of Part 2 of Division 1 of the Insurance Code; readily marketable securities acceptable to the insurance commissioner that are listed on U.S. national or principal regional securities exchanges; or clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in subdivision (a) of Section 922.7 of the Insurance Code, in the name of the workers’ compensation insurer and held in this state in trust in a form acceptable to the Commissioner at a qualified depository with the workers’ compensation insurer as trustee and the California Insurance Commissioner as an additional beneficiary.~~

~~(b) “Collateral” or “security” means the property or assets given to secure the obligation of an insured employer for reimbursement or payment of the deductible amount, or amount agreed to be paid of a workers’ compensation claim, under the workers’ compensation deductible policy.~~

~~(c) “Qualified depository” means a qualified depository as set forth in subparagraph (2) of subdivision (a) of Insurance Code section 1104.9 that is located in this state.~~

(a) “Collateral” means assets obtained from an employer to secure its obligations to an insurer pursuant to a workers’ compensation deductible policy.

(b) “Collateral deposit” means a deposit made by an insurer that consists of collateral received from one or more employers.

(c) “First-dollar basis” means liability for payment of the entire loss or claim, without the application of a deductible.

(d) “Workers’ compensation deductible policy” means one, or any combination of more than one, policies, endorsements, contracts, or security agreements in which the employer who is insured for its workers’ compensation liability has agreed to reimburse the workers’ compensation insurer for losses incurred up to the deductible amount elected or payments made up to a specified dollar amount in connection with the workers’ compensation insurance coverage or agreed with the workers’ compensation insurer to either pre-fund the initial portion, or some amount thereof, of any potential workers’ compensation claim, or the potential expenses related to any claim, under the policy up to a specified dollar amount.

(e) “Workers’ compensation insurer” means any insurer that is or is required to be admitted to transact workers’ compensation insurance in the State of California and the State Compensation Insurance Fund.

~~Note: Authority cited: Section 11736.5, Insurance Code. Reference cited: Sections 922.7(a), 1104.9(a)(2), 1170 *et seq.*, 11691, and 11736.5, Insurance Code.~~

Note: Authority cited: Sections 922.8, 923, 923.5, 11558, 11691, 11736.5, California Insurance Code; *CalFarm Insurance Company v. Deukmejian*, 48 Cal. 3d 805 (1989); and *20th Century Insurance Company v. Garamendi*, 8 Cal. 4th 216 (1994). Reference cited: Sections 922.5, 923, 923.5, 1104.9, 11558, 11691, 11693, 11735 and 11736.5, California Insurance Code.

Section 2509.83. Reserve requirements for workers' compensation deductible policies.

Section 2509.82. Deposit Requirement

~~(a) Workers' compensation insurers shall establish loss and loss adjustment expense reserves for workers' compensation deductible policy losses and claims pursuant to the requirements set forth in section 923.5 and Article 1 (commencing with section 11550) of Chapter 1 of Part 3 of Division 2, and of the Insurance Code on the same basis as policies providing first dollar coverage and pursuant to the requirements of this article.~~

~~(b) For purposes of establishing loss and loss adjustment expense reserves for the three (3) most recent years of coverages for workers' compensation deductible policies pursuant to section 923.5 and Article 1 (commencing with section 11550) of Chapter 1 of Part 3 of Division 2 of the Insurance Code, earned premium shall be established using the estimated annual premium for full coverage without a deductible.~~

~~(c) The premium for a workers' compensation deductible policy shall be adjusted to reflect the workers' compensation insurer's audit premiums, subject to the Commissioner's examination and audit.~~

(a) Premium and reserves for workers' compensation deductible policies shall be calculated and reported separately in Special California Schedule P, on a first-dollar basis. The reserves may be discounted in the manner provided in Insurance Code Section 11693(a).

(b) The deposit requirement for workers' compensation deductible policies for all but the latest three accident years shall be calculated and reported as follows:

(1) Reserves for insured losses, which are those loss amounts that exceed the deductible.

(2) Reserves for deductible losses, which are those loss amounts within the deductible.

(3) The total of the amounts of paragraphs (1) and (2) above constitutes the total loss reserves for deductible policies on a first-dollar basis, as if there were no

deductible. This total amount shall be the deposit requirement for all but the latest three accident years.

(c) The deposit requirement for workers' compensation deductible policies for the latest three accident years shall be calculated and reported separately for each accident year as follows:

(1) Earned premium shall be reported separately for each of the following categories:

(A) The earned premium that would have been earned if the policies had been issued on a first-dollar basis, without deductibles.

(B) The earned premium for the insured layer, after application of deductible credits.

(C) The earned premium for the deductible layer. This is calculated as (A) minus (B).

(2) Minimum incurred losses and minimum reserves shall be calculated separately for the insured layer and the deductible layer. Minimum incurred losses shall be calculated by multiplying the reported earned premium by 65%. Minimum reserves shall be calculated by subtracting from the minimum incurred losses those losses paid through the "as of" date of the most recent Annual Statement.

(3) If the actual reserves for either layer are less than the minimum reserves calculated pursuant to paragraph (2) of this subsection, then the deposit requirement for that layer shall be equal to the minimum reserve for that layer. If the actual reserves for either layer are greater than or equal to the minimum reserves for that layer, then the deposit requirement for that layer shall be equal to the actual reserves for that layer.

~~Note: Authority cited: Sections 923.5 and 11736.5, Insurance Code. Reference cited: Section 923.5, 11550 *et seq.*, 11558, and 11736.5, Insurance Code.~~

~~Note: Authority cited: Sections 922.8, 923, 923.5, 11558, 11691, 11736.5, California Insurance Code; *CalFarm Insurance Company v. Deukmejian*, 48 Cal. 3d 805 (1989); and *20th Century Insurance Company v. Garamendi*, 8 Cal. 4th 216 (1994). Reference cited: Sections 922.5, 923, 923.5, 1104.9, 11558, 11691, 11693, 11735 and 11736.5, California Insurance Code.~~

~~Section 2509.82. Deposits and forms of security that workers' compensation insurers may use to secure deductible policies.~~

Section 2509.83. Collateral and Deposit Credit

~~(a) Workers' compensation insurers shall calculate deposit requirements for workers'~~

~~compensation deductible policies pursuant to Insurance Code section 11691 on the same basis as policies providing first dollar coverage and pursuant to the requirements of this article.~~

~~(b) A workers' compensation insurer shall receive credit against the deposit requirements of Insurance Code section 11691 of Section 2509.82 of this article for that portion of its workers' compensation policy loss and loss adjustment expense reserves related to workers' compensation deductible policies for which the workers' compensation insurer has obtained assets held in trust from the insured employer as collateral for any workers' compensation deductible policies up to the value of the assets held in trust. collateral obtained from an insured employer only if the collateral meets the following requirements:~~

~~(1) Collateral shall be in the form of cash, letters of credit, or the securities specified in Insurance Code Section 11691 as allowable for insurer deposits. Collateral in the form of letters of credit shall meet the requirements of Section 2303.8(c) of this chapter, except that the beneficiary shall be the Insurance Commissioner.~~

~~(2) Collateral shall be deposited by the insurer in the manner specified in Insurance Code Section 11691 for insurer deposits. The insurer shall segregate collateral deposits from its other deposits. Collateral deposits shall identify, in a manner satisfactory to the Insurance Commissioner, the specific collateral held for each named employer and the corresponding policy number.~~

~~(b) The deposit credit permitted by this section shall not exceed the amount of the deposit required for the deductible layer on a per policy basis.~~

~~(c) This section shall not apply to the State Compensation Insurance Fund.~~

~~Note: Authority cited: Section 11736.5, Insurance Code. Reference cited: Sections 11691 and 11736.5, Insurance Code.~~

~~Note: Authority cited: Sections 922.8, 923, 923.5, 11558, 11691, 11736.5, California Insurance Code; *CalFarm Insurance Company v. Deukmejian*, 48 Cal. 3d 805 (1989); and *20th Century Insurance Company v. Garamendi*, 8 Cal. 4th 216 (1994). Reference cited: Sections 922.5, 923, 923.5, 1104.9, 11558, 11691, 11693, 11735 and 11736.5, California Insurance Code.~~

~~Section 2509.84. Commissioner's right to examine and audit collateral and reserves for workers' compensation deductible policies.~~ Insurance Commissioner's Duties and Discretion

~~The Commissioner may examine and audit the workers' compensation insurer's assets held in trust and the establishment of loss and loss adjustment expense reserves for workers' compensation deductible policies for the purpose of verifying compliance with this article in addition to all other rights and duties of the commissioner.~~

The duties and the discretion of the Insurance Commissioner conferred by statute to ensure the adequacy of the statutory deposit required by Insurance Code Section 11691 for workers' compensation deductible policies are not exhausted by these regulations.

~~Note: Authority cited: Sections 730 and 11736.5, Insurance Code. Reference cited: Sections 730 and 11736.5, Insurance Code.~~

Note: Authority cited: Sections 922.8, 923, 923.5, 11558, 11691, 11736.5, California Insurance Code; *CalFarm Insurance Company v. Deukmejian*, 48 Cal. 3d 805 (1989); and *20th Century Insurance Company v. Garamendi*, 8 Cal. 4th 216 (1994). Reference cited: Sections 922.5, 923, 923.5, 1104.9, 11558, 11691, 11693, 11735 and 11736.5, California Insurance Code.

Section 2509.85. Return of Collateral

The Commissioner shall approve the release of all or a portion of a collateral deposit within 30 days of receipt of a written request by a workers' compensation insurer, if the Commissioner is satisfied that the insurer's deposit is adequate.

Note: Authority cited: Sections 922.8, 923, 923.5, 11558, 11691, 11736.5, California Insurance Code; *CalFarm Insurance Company v. Deukmejian*, 48 Cal. 3d 805 (1989); and *20th Century Insurance Company v. Garamendi*, 8 Cal. 4th 216 (1994). Reference cited: Sections 922.5, 923, 923.5, 1104.9, 11558, 11691, 11693, 11735 and 11736.5, California Insurance Code.

Section 2509.86. Effective Date

Sections 2509.80 through 2509.86 of this article shall become effective on January 1, 2008 (the "Effective Date") and shall apply to all workers' compensation deductible policies issued or renewed on or after the Effective Date.

Note: Authority cited: Sections 922.8, 923, 923.5, 11558, 11691, 11736.5, California Insurance Code; *CalFarm Insurance Company v. Deukmejian*, 48 Cal. 3d 805 (1989); and *20th Century Insurance Company v. Garamendi*, 8 Cal. 4th 216 (1994). Reference cited: Sections 922.5, 923, 923.5, 1104.9, 11558, 11691, 11693, 11735 and 11736.5, California Insurance Code.